SB CRIMINAL MISC. PETITION NO.641/2006.
Smt. Urmila & another Vs. State & another.

6.9.2006.

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Sanjay Mehla for the petitioners.
Mr. S.N. Gupta PP for the State.

REPORTABLE

The instant misc. petition under Section 482 Cr.P.C. seeks quashing of the order dated 2.3.2006 passed by the learned Chief Judicial Magistrate, Jhunjhunu in Criminal Case No.330/03 whereby the application filed by the petitioners under Section 258 read with Section 468 Cr.P.C. has been dismissed.

The relevant facts are that one Vasudev who happens to be the husband of petitioner No.1 lodged a written report at PS Mandawa on 5.8.1999 against non-petitioner No.2 Prem Singh and his wife Smt. Indra Devi regarding an incident that took place at 10.00 a.m. On that day. An FIR being No.87/99 came to be registered on its basis for the offences under Sections 447, 323 and 379 IPC.

It appears that a cross case being FIR No.89/99 was lodged by the accused-petitioners for the offences under Sections 447 and 323 IPC in which charge-sheet was filed on 30.9.1999 in the court of learned Addl.Chief Judicial Magistrate, Jhunjhunu for the offences under Sections 447, 308, 323/34 IPC. The case being exclusively triable by the court of Sessions was committed to the court of learned Sessions Judge, Jhunjhunu which was transferred to the learned court below for decision. After hearing

charge arguments, the learned trial court discharged the accused persons of the offence under Section 308 IPC and forwarded the case to the learned Chief Judicial Magistrate, Jhunjhunu for trial in accordance with law. However, the police submitted final report in the case lodged by the non-petitioner No.2, but on a protest petition being filed by him after inquiry under Sections 200 and 202 Cr.P.C., the learned Addl. Chief Judicial Magistrate, Jhunjhunu took cognizance on 1.7.2002 against the accused-petitioners for the offences under Sections 447 and 323 IPC.

Learned counsel for the petitioner has contended on the strength of **Dr. Hanuman Singh & Ors. Vs. State of Rajasthan- 1994 RCC 267** that cognizance order passed on 1.7.2002 being barred by limitation as provided under Section 468(2) Cr.P.C., the said order was liable to be set aside and proceedings initiated pursuant thereto were also liable to be dropped for which an application under Section 258 Cr.P.C. was filed, but the same was turned down on 2.3.2006 by the learned court below which order being unsustainable in law may be set aside and the proceedings initiated against the petitioners be dropped. Learned PP has supported the impugned order.

It is evident from the above discussion that the only grievance of the petitioners is that the order of cognizance was time barred by limitation and the proceedings were un-sustainable in law, therefore, the complaint and the criminal proceedings commenced pursuant thereto are un-

sustainable in law. But their Lordships of the Hon'ble Supreme Court in the case of **Bharat Damodar Kale & another Vs. State of A.P.- (2003)8 SCC 559** clearly held that the prescribed limitation is only for filing of the complaint or initiation of the prosecution and not for taking cognizance which is further clear from a reading of Section 469 Cr.P.C. It has been observed that Section 470 Cr.P.C. indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. It has been categorically held that a cummulative reading of various provisions of Chapter XXXVI Cr.P.C. indicates that the court taking cognizance can take cognizance of anoffence the complaint of which is filed before it within the prescribed period of limitation and if need be after excluding such time which is legally excludable. The limitation prescribed is not for taking cognizance within the period of limitation for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of prescribed limitation under the Code.

In the instant case admittedly, the FIR was lodged on the same day the occurrence was alleged to have taken place. Therefore, the grievance of the learned counsel for the petitioners is clearly untenable in view of the law laid down by the Hon'ble Apex Court in the afore-mentioned authority and it is not possible to follow the authority of

this court referred to by the learned counsel for the petitioners in the face of the law laid down by the Hon'ble Apex Court.

Consequently, this petition being without merit and substance is not found fit to be admitted and deserves to be and is hereby dismissed.

(HARBANS LAL)J.